

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GERARDO RAMOS,

Plaintiff,

-against-

**MEMORANDUM
AND ORDER**

10-CV-4497 (SJ)

**TEACHERS' RETIREMENT SYSTEM
OF THE CITY OF NEW YORK, et al.,**

Defendants.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Defendants have requested that the Court enter a revised briefing schedule to govern defendants' motions to dismiss. See Letter to Judge Johnson from Keith M. Snow (Feb. 25, 2011). Plaintiff reportedly consents to extending the schedule, but objects to allowing defendants to amend their respective motions to dismiss in response to plaintiff's recently filed Amended Complaint. See id. at 2.

It is undisputed that defendant Teachers' Retirement System of the City of New York ("TRS") served its motion to dismiss on January 7, 2011, and that defendant United Federation of Teachers ("UFT") filed its motion to dismiss on February 4, 2011. See id. at 2-3.¹ Thereafter, on February 14, 2011, plaintiff filed an Amended Complaint, see Amended Complaint (Feb. 14, 2011) -- presumably in response to the pending motions. The Amended Complaint alters and supplements language in the section entitled "Background Facts," drops a claim for violation of New York State Common Law and Breach of Fiduciary Duty against

¹ Consistent with Judge Johnson's individual rules, the motion papers will not be filed until fully submitted; therefore, the undersigned magistrate judge does not have access to and has not reviewed defendants' moving papers.

defendant UFT, and recharacterizes a state constitutional claim as one for breach of contract pursuant to the New York State Constitution. In other words, the Amended Complaint does not merely correct minor mistakes such as typographical errors, but instead changes the pleading and plaintiff's theory of liability in material ways. In view of those amendments to the pleading, plaintiff should not be heard to object to defendants' request to file amended motions to dismiss.

Accordingly, this Court adopts defendants' proposed schedule, to wit:

- TRS shall serve its amended motion to dismiss by March 18, 2011;
- UFT shall serve its amended motion to dismiss by April 1, 2011;
- Plaintiff shall serve opposition papers to TRS's amended motion to dismiss by April 15, 2011;
- Plaintiff shall serve opposition papers to UFT's amended motion to dismiss by April 20, 2011;
- TRS shall serve its reply by May 6, 2011; and
- UFT shall serve its reply by May 20, 2011.

SO ORDERED.

**Dated: Brooklyn, New York
March 18, 2011**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**